

rules.⁵⁸ We will also not impose this reporting requirement on Tier III CMRS carriers.⁵⁹ Finally, interconnected VoIP service providers will be exempt from this requirement if their annual revenues fall below the revenue threshold established pursuant to Section 32.11 of the Commission's rules.

27. *Back-Up Power Supply.* We recognize that the provision of a backup power supply as directed by the rule adopted in this Order may be a significant financial hardship for certain small businesses. Accordingly, we will not impose this requirement on LECs (both ILECs and CLECs) that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules. We will also not apply this requirement to non-nationwide CMRS providers with no more than 500,000 subscribers.⁶⁰

Report to Congress: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁶¹ In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁶²

⁵⁸ See *supra* n. 224.

⁵⁹ Tier III carriers are non-nationwide CMRS providers with no more than 500,000 subscribers at the end of 2001. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Phase II Compliance Deadlines for Non-Nationwide Carriers*, CC Docket No. 97-102, Order to Stay, 17 FCC Rcd 14841, 14848 ¶ 22 (2002).

⁶⁰ Although this standard is based on the Tier III CMRS definition which is defined as non-nationwide CMRS providers with no more than 500,000 subscribers as of the end of 2001, we note that we are not exempting from this requirement those non-nationwide CMRS providers that have grown to exceed the 500,000 subscriber threshold since 2001 as we believe that such providers are at a size where they should be able to comply with the emergency back-up power rule.

⁶¹ See 5 U.S.C. § 801(a)(1)(A).

⁶² See 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119 and Docket No. 06-63.*

Today, the Commission takes action to implement the recommendations of the Independent Katrina panel. Experts on the panel from all sectors of the communications industry and leading public safety organizations worked hard to study the impact of the disaster and focus the Commission's attention on proposals that would improve our response and recovery efforts for the future.

The recommendations we adopt today address a wide range of initiatives designed to improve disaster preparedness, network reliability and resilience, and communications among emergency responders. In particular, we require local exchange carriers and CMRS providers to have an emergency back-up power source for certain critical network facilities and we also require these service providers and VoIP providers file a report with the Commission on the resiliency and reliability of their 911 networks or systems.

I am pleased that, upon release of the Panel's final recommendations, the Public Safety Bureau moved quickly to begin the process of implementing many of these recommendations. I look forward to receiving the Bureau's first full progress report this fall, and commit to continue to work with my colleagues to ensure that this Commission remains vigilant to improve communications for the needs of emergency preparedness and response.

I would again like to thank all the members of the Katrina panel for their public service and dedication. The American public has benefited greatly from the thoughtful contributions made by all the industry and public safety participants who gave their time and effort in this endeavor.

I would also like to thank Nancy Victory for her leadership as Chair of the panel. Her knowledge and expertise helped guide the panel and ensure that it would deliver a quality work product within a very tight timeframe. Finally, I would also like to express my appreciation to my fellow Commissioners for their continued support of the work of the Panel, and the efforts of our Public Safety Bureau as it enacts the improvements we adopt today.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119 and WC Docket No. 06-63.

Hurricane season begins anew tomorrow. News programs are filled with predictions of how many and how intense this year's storms may be; stories about the extent of preparations that are being made to cope with the disruptions that might once again befall New Orleans, the Gulf Coast and other hurricane-prone areas of the country; and stories chronicling the thus-far disappointing reconstruction of the areas hit so hard by Hurricane Katrina. Our nation was a nation scarred by the images of suffering and destruction that were broadcast into our homes in the days and weeks following Katrina and also Hurricane Rita. I visited the Gulf Coast with Chairman Martin and other communications leaders in the days following the catastrophe, and I know that I will never forget the searing images of devastation we witnessed there.

The region's suffering was severely compounded by the almost total failure of public safety and commercial communications networks. For a week or more, more often than not, 911 calls went unanswered, broadcast stations were dark, public safety radio systems were seriously compromised, wireless phones were inoperable, and wireline phones had no dial tone. Most painful of all was that a significant portion of this failure was unnecessary and could have been prevented, or at least seriously ameliorated, by better pre-disaster planning and more coordinated public sector-private sector teamwork. I say this not to point fingers, but to point up our local, regional and national shortfalls in public safety and disaster preparedness. Part of our problem today, as a country, is our failure to come to grips with how much work remains to be done to build effective public safety communications. It is huge, it is expensive and it is totally necessary.

The Gulf Coast tragedy presented us with a solemn duty to sift through the shortfalls, in both the private and the public sectors; to grasp the harsh lessons that needed to be learned; and to enhance our preparedness for the next major cataclysm. As I hope we are all aware, there *will* be a next one—certainly other natural disasters or, even more terrifying if that is possible, more terrorist attacks.

The FCC undertook an active role in the days following the big storm. The Commission team, under Chairman Martin's leadership, worked around the clock, for days and weeks, to restore communications and provide assistance all along the Gulf Coast. Communications industries likewise worked long and hard to restore critical services and we owe them a large measure of gratitude, too. Subsequently an Independent Panel was established under former NTIA Administrator Nancy Victory to review thoroughly what had happened, what systems had worked and which had not, and to provide recommendations for the road ahead. Today, after putting these recommendations out for comment, the Commission takes a step forward.

But it is only that—another step forward. This is not a Report and Order that brings a proceeding to a close. It is an incremental step against the backdrop of a challenge that will continue to stalk us and might even get worse in coming years as climate changes suggest more frequent and more intense storms and disruptions across much of the country. There is so much left undone and so much yet to do.

I consider it a positive step that today's item announces two new regulations for carriers who fall under the Commission's jurisdiction. First, following the suggestion of the National Emergency Number Association (NENA), all carriers of a certain size must now ensure the availability of emergency/backup power in all their central offices. Second, they must file with the Commission an analysis of the redundancy, resiliency, and dependability of their 911 facilities.

These requirements will help improve the nation's readiness for the next disaster and I appreciate my colleagues' willingness to make these measures mandatory. Their adoption represents recognition by

this Commission that we cannot rely exclusively on the workings of the free market and the sometimes-too-sanguine assurances of industry when it comes to assuring public safety. I am pleased that we seem to be on the cusp of realizing that a more proactive approach may be necessary. As Justice Frankfurter once observed, "Wisdom too often never comes, and so one ought not to reject it merely because it comes late."¹ It is important that the Commission is taking this up.

But I also think that record that was developed was too heavily skewed by the belief—I think the pernicious belief—that the FCC either *will not* or *should not* take a lead role in mandating network resiliency standards. I simply cannot accept this view. The nation's experience with 9/11 and Hurricane Katrina indicates to me that industry best practices and voluntary best efforts are not by themselves always going to get the job done. You don't have to take my word for it. The comments filed in this docket by St. Tammany Parish, one of the Louisiana areas most devastated by Hurricane Katrina, put it well: "Regarding the question of whether to 'rely on voluntary consensus or other measures for enhancing readiness and promoting more effective response efforts' we encourage the Commission to actively pursue positive results to the extent permitted. Voluntary consensus measures, while well intended, have fallen short many times."

I can't put it any better than that. The individual citizens who bore the brunt of Katrina's fury and the PSAPs who tried to cope with it certainly understand that some things need to be done, and done soon, and done on a mandatory basis if they are not going to be voluntarily implemented. These are the times when the Commission needs to step in and make it happen. Otherwise an effective system of public safety will never be achieved. So I hope that our willingness today to implement mandatory actions will be the beginning of a broader and more general reorientation of our approach to public safety issues. I am pleased we are beginning down this road and I hope we stay on it. I also hope and trust that the private sector realizes the public trust it has been given to aid in the protection of our citizens. The private sector played a critical role in the aftermath of Katrina and Rita, and still does, as it rebuilds the network infrastructure in that devastated region. The industry's continuing involvement in these efforts is essential if government and industry together are going to be successful next time. Our nation's citizens deserve, and expect, no less. Public safety is not something nice to have—it is a national imperative and the first obligation of all of us in this room as public servants.

Another role that I suggested for the Commission was to act as a clearinghouse for ideas that can better prepare organizations of all sizes for the next disaster. I am talking here about the hundreds of thousands of public safety agencies, hospitals, nursing homes, charities, small businesses, and other organizations that lack the resources to come up with self-generated, custom-built and fully-tested disaster readiness plans. Why should each of these groups have to start from scratch and re-invent the public safety wheel? Wouldn't it be far better if they could come to the FCC to learn about what has worked for other organizations and what hasn't? After all, learning that your disaster plan doesn't work in the middle of a disaster is emphatically *not* the right time to make that discovery. The technologies and protocols that organizations rely upon in a crisis need to work every time.

Today's item instructs the Commission's new Public Safety and Homeland Security Bureau—under its new Bureau Chief, Derek Poarch—to take the lead role in building such a clearinghouse. As I have noted many times before, this is where the Commission should have gone six years ago, right after 9/11. I commend Chairman Martin's willingness to take a leadership role in this critically important area and I applaud his efforts to initiate processes that will hopefully put this agency in the forefront of communications readiness planning, exactly where it belongs.

As with all public safety initiatives, the proof will be in the pudding. In the weeks and months

¹ *Henslee v. Union Planters Nat. Bank & Trust Co.*, 335 U.S. 595, 600 (1949) (Frankfurter, J., dissenting).

ahead, our new Bureau and Chief are tasked with developing readiness checklists for each industry sector; awareness programs on alternative technologies such as satellite and paging systems, Wi-Fi, and WiMAX; and outreach programs for emergency medical and other communities. It will require significant resources to realize these and many other objectives, such as developing and publicizing a first-rate website that communicates the Commission's latest learning on how to prepare for disasters. Commission outreach is so central to all this and I am pleased that the Bureau will issue regular reports detailing our outreach activities. I, for one, will be monitoring these reports closely to assure myself that the Bureau is doing everything that it can to reach those who can benefit from the FCC's research, experience and programs. I urge Chief Poarch to be aggressive in this task—to become a tireless advocate and proselytizer on this issue. It was never my idea that we would settle for rebuilding a communications system that was taken down by Katrina—a terrible storm, to be sure, but far less devastating than a direct hit from a Category 5 hurricane would have been. The good citizens of New Orleans and the Gulf Coast have a right to expect, and should settle for no less, than the best and most up-to-date communications systems that our country can provide.

So I vote to approve this item as a step along the way, but just a step, holding out the prospect of continuing commitment to see the job through and to deploy the full decision-making authority of this Commission to make it happen. Thanks to the Bureau, all the commenters, our hard-working bureau and staffs, and my colleagues for their efforts here.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks; EB Docket No. 06-119 and WC Docket No. 06-63.

Hurricane Katrina and the 2005 hurricane season represented one of the most challenging times our country has seen in recent years. Its memory should serve as ample reminder of the commitment that will be necessary to achieve disaster readiness and preparedness. All aspects of daily life in the Gulf Coast region were severely impacted by the devastation caused by these storms – telecommunications and media services were no exception. With such destruction of our communications infrastructure, Hurricane Katrina demonstrates in stark relief the essential role of communications during emergencies, whether citizens are trying to find out what is happening with their families, officials are trying to disseminate critical information, or emergency personnel are responding to an urgent situation.

The Katrina Panel Report confirmed that our nation's communications systems and our government's response capabilities were put to the test, with very mixed results. While our Order today achieves some limited gains, there is still much to be done before we face our next national test.

The Commission can and must play a key role in improving our nation's disaster preparedness, network reliability, and communications among first responders. Through our Public Safety and Homeland Security Bureau, the Commission must take a more active lead in coordinating with state, local and Tribal governments, public safety answering points (PSAPs), and first responders in advance of future disasters; in providing important outreach to our nation's emergency medical communities; and in working with other federal agencies to ensure that credentialing procedures and other requirements are developed in advance to ensure access by communications workers to affected areas post-disaster. This item sets out several important directives to our staff to meet these worthwhile objectives. These efforts are critical if the Commission is to establish and maintain a position of leadership. Many of these proposed outreach efforts were specifically recommended by the Hurricane Katrina Panel, so I want to extend again my thanks to Nancy Victory and the members of the Panel for investing their time and effort to draw out lessons from this disaster and to better prepare our communities for the future.

Unfortunately, we still have much work remaining to improve the country's communications preparedness in light of the events of 20 months ago. As the Order and the Hurricane Katrina Panel Report each point out, Hurricane Katrina knocked out more than three million customer phones in the region and more than a thousand cell sites. More than 35 PSAPs were off-line and unable to provide 911 or enhanced 911 services. The Katrina Panel Report identified three main problems that caused the majority of communications network interruptions: flooding; lack of power and/or fuel; and failure of redundant pathways.¹ I am pleased that we were able to improve the item by addressing these concerns through two modest provisions dealing with (1) emergency back-up power requirements, and (2) an obligation on service providers to file 911 analysis reports. These are worthwhile efforts, but they alone will not be sufficient to ensure that our communications systems are ready to handle the high hurdles that disasters can bring.

Indeed, the larger focus of the item is on a series of aspirational objectives for our new Bureau rather than more concrete assurances for our nation's citizens and first responders. For example, one of the key findings in the Katrina Panel Report was the widespread damage caused by unprecedented flooding: "While communications infrastructure had been hardened to prepare against strong winds from a hurricane, the widespread flooding of long duration associated with Katrina destroyed or disabled

¹ See Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission* (Katrina Panel Report) at 13.

substantial portions of the communications networks and impeded trained personnel from reaching and operating the facilities.”² There may be no silver bullets to address the widespread flooding caused by a disaster such as Hurricane Katrina; yet, this Order does not in itself require any concrete actions to address this very real problem. The Commission needs to initiate a discussion of hardening the network to address flood related issues. While the Order directs the Bureau to encourage the development of voluntary checklists, it still leaves work to be done. Although outreach and voluntary measures can play a critical role, we must continue to push communications providers to go the extra mile to achieve a true level of preparedness. Without firm commitments, can we seriously tell the people of the Gulf Coast region that this Commission has taken all of the necessary steps to ensure that such a communications disaster will never happen again?

Similarly, the Katrina Panel Report analyzed extensively the problem of the failure of redundant pathways and the impact on communications networks throughout the region from the loss of switches, T1s, and other leased lines. “As an example, a major tandem switch in New Orleans was isolated, which meant that no communications from parts of New Orleans to outside the region could occur.”³ Once again, the Commission offers little in the way of solutions for a serious network shortfall that may well be present in many other communities. Rather, the item encourages carriers to adopt voluntary readiness checklists based on best practices advanced by the Network Reliability and Interoperability Council (NRIC) and the Media Security and Reliability Council (MSRC), our recently-terminated Federal Advisory Committees. I understand that neither group has met in well over a year, with NRIC VII holding its last meeting on December 16, 2005, just a couple of months after the hurricane season ended. Now that these committees have been replaced with a new combined reliability council, we will need to seek input more regularly if we are going to rely on a system of carrier commitments and best practices to effectuate network reliability changes.

To all of the affected citizens in the Gulf Coast area – and to the many diverse communities at risk for future catastrophic events – we owe an honest assessment of the performance of the telecommunications and media infrastructure during Hurricane Katrina and of our strengths, weaknesses, and commitment to preparedness going forward. Shortly after the storm, I had an opportunity to witness first hand some of the widespread destruction and personal loss in the Gulf Coast and to meet with communications workers and first responders, who labored around the clock to restore connectivity to the Gulf Coast, often at great personal sacrifice. It was humbling to see Americans act so selflessly when others are in need, particularly when so many were themselves suffering the loss of homes, communities, or loved ones. We owe them not only deep gratitude but also a serious effort to develop real solutions to address identified weaknesses and holes in the preparation process. While we have made some limited advances in this Order, I believe our work is still far from over.

² *Id.*

³ *Id.* at 14.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119 and WC Docket No. 06-63.

Today's item marks an important step towards ensuring that the Commission and the industries it is responsible for are better prepared to respond in the face of natural disasters and other types of incidents, such as a pandemic, industrial accident, environmental incident, or terrorist attack. I am proud to vote in support of an item which, I believe, reflects the best aspects of the Independent Panel's report and the subsequent input from a diverse array of commenters.

When we released the Notice of Proposed Rulemaking that led to today's order, I specifically asked and encouraged industry to develop and share their thoughts, strategies and ideas on disaster preparedness and emergency system interoperability. While the industry certainly stepped to the plate, they were matched in their expertise, passion, and innovation by a diverse array of public safety agencies, federal and state government agencies, equipment manufacturers, and concerned citizens. This diversity and depth of participation in this proceeding created a record which led to an item which I think everyone should be proud of, and marks a standard which we should strive to achieve across the board.

Finally, I would like to again thank Nancy Victory and the members of the Independent Panel for all of their efforts. I hope and trust that they will take pride and, to some extent, comfort in the fact that they have played such a key role in helping to prepare our Nation for whatever challenge it faces next.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119 and WC Docket No. 06-63.

I support our action today to move forward on a number of the recommendations made by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Hurricane Katrina Panel). Our work is particularly timely, given that the Atlantic Hurricane season begins tomorrow, June 1, and scientists at the National Oceanic and Atmospheric Administration (NOAA) Climate Prediction Center are projecting a 75 percent chance that hurricane activity will be above normal this year.

Moreover, it is particularly helpful that our efforts regarding emergency preparedness have broad applicability, given the need to plan for not only natural disasters such as hurricanes, but also for incidents like terrorist attacks, influenza pandemic outbreaks and industrial accidents. Any of these emergencies could result in sudden and significant shortages of personnel, a surge in communications traffic, possible disruptions to communications networks (due to increased telecommuting during an influenza pandemic, for example), and lack of manpower to immediately repair affected communications networks. I am pleased that we have built upon the lessons learned from the Hurricane Katrina disaster to promote more effective, efficient response and recovery efforts, as well as heightened readiness and preparedness. Thank you to all involved.